IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.88 OF 2007

Mrs.Irene Gladys Whittam
age 78 years, Retired,
Residing at Flat No.3,1st floor,
Blue Nile Apartments, 9 Waroda Road,
Bandra(West), Bombay 400 050 ...Applicant

vs.

Mrs.Pelagia D'Souza
age 73 years, Retired,
Residing at Flat No.2, Dreamland,
Dr.ambedkar Road,Bandra (West),
Bombay 400 050 ...Respondent

Mr.A.K.Abhyankar, Sr.Advocate with Rajesh Patil for the Applicant
Mr.Clive D'Souza for the Respondent.

CORAM: A.S.OKA,J.
DATE : JUNE 21, 2007.

ORAL JUDGMENT:

1. Rule. The Advocate for the Respondent waives service. Considering the facts and circumstances of the case, taken up for hearing at the stage of admission.

2. The Revision Applicant has taken an exception to the decree passed by the court of Small Causes for possession which has been confirmed by the Appeal Bench of the court of Small Causes. The decree is passed on the ground of bonafide requirement of the Respondent-landlady to occupy the suit premises. It was pleaded by the Respondent-landlady that she was residing in a rented premises of a very small area and therefore, she needs the suit premises for her personal use.

3. In this Revision Application, an Affidavit dated 28th March 2007 has been filed by the Revision Applicant. In the said Affidavit, it is stated that a flat has been purchased by the Respondent sometime in the March 2006 in Luisa Co-operative Housing society Ltd. at Bandra, Mumbai. It is stated in the Affidavit that this fact was not disclosed to the Appellate Court. There is a reply filed by the Respondent to the said Affidavit. In the said reply, she has stated that she has surrendered her tenancy rights in respect of the Flat No.2 in Dreamland Building and has utilised the monetary consideration received by her for acquiring a flat on ownership basis in the Luisa Co-operative Housing Society Ltd. It is stated that the flat purchased in Luisa Co-operative Housing Society Ltd. was purchased on 8th March 2006. It is contended that the said flat is again a small flat and is not sufficient to accommodate the family members of the Respondent. In the said Affidavit it is stated that the Respondent’s son was required to shift to a premises at Malad (West), Mumbai.

4. The acquisition of flat on ownership basis by the respondent during the pendency of the Appeal before the Appeal Bench has been accepted by the Respondent. In fact, this fact ought to have been brought to the notice of the Appeal Bench. Another fact which is set out in the reply filed by the

Respondent is that her son is residing in Sonal Link Residency at Malad (West). Considering the fact that the decree passed by the courts below is on the ground of bonafide requirement, said events which had taken place in the year 2006 are certainly relevant for considering the ground of bonafide requirement.

5. The parties have not led evidence on the aforesaid aspects. It will be therefore necessary to allow the parties to lead further evidence on the aforesaid events, . Hence, it is obvious that the order of remand will have to be passed to enable the parties to lead further evidence. Considering the fact that the ground of eviction is the bonafide requirement, it is desirable to send the matter back to the Appeal Bench. Parties will have to be permitted to carry out amendment, if any, to their respective pleadings based on the aforesaid subsequent events.

6. Hence, I pass the following order :

i) Judgment and Order dated 21st December 2006 passed by the Appeal Bench of the Court of Small Causes, Mumbai in Appeal No.82 of 2004 is hereby set aside and the said Appeal is restored to the file.

ii) Parties are directed to appear before the Appeal Bench of the Court of Small Causes on 30th July 2007. It will be

open for both the parties to apply for amendment of the pleadings on the basis of the subsequent events referred to in the Judgment. If such Applications are made, the Appeal Bench will permit the parties to carry out amendment. Thereafter, the Appellate Court will allow the parties to lead additional evidence.

iii) The Appeal shall be decided afresh considering the evidence which is already on record and after considering the additional evidence which may be adduced by the parties. The Appeal shall be decided as expeditiously as possible and in event on or before 30th April 2008.

iv) All contentions of the parties on merits of the Appeal are expressly kept open.

v) Revision Application is partly allowed in above terms.

JUDGE